NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION
DOCKET NO. L-0738-21

JOSEPH G. COLACITTI, CITY OF ELIZABETH, TOWNSHIP OF PLAINSBORO, PETER CANTU, NEIL J. LEWIS, ED YATES, NURAN NABI, CITY OF VINELAND, and TOWNSHIP OF LIVINGSTON,

Plaintiffs,

v.

PHILIP D. MURPHY, in his official capacity as Governor of New Jersey, and THE STATE OF NEW JERSEY,

Defendants.

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APPROVED FOR PUBLICATION

January 9, 2023

COMMITTEE ON OPINIONS

Decided: July 22, 2022

Michael S. Simitz and Edward J. Kologi for plaintiffs Joseph G. Colacitti and City of Elizabeth (Kologi Simitz, attorneys)

Martin Allen and Wesley E. Buirkle for plaintiffs Peter Cantu, Neil J. Lewis, Ed Yates, Nuran Nabi, City of Vineland, and Township of Plainsboro (DiFrancesco Bateman, Kunzman, Davis, Lehrer & Flaum, PC, attorneys).

Michael J. Caccavelli and Grace Chun for plaintiff Township of Livingston (Pearlman & Miranda, LLC, attorneys).

Abiola G. Miles, Michelline Capistrano Foster, and James Robinson, Deputy Attorneys General, for defendants (Matthew J. Platkin, Attorney General of New Jersey)

Renee Steinhagen and Bruce Afran for amici curiae New Jersey Citizen Action, Maura Collinsgru, American Federation of Teachers, Donna Chiera, and Mark and Katherine Smith (New Jersey Appleseed Public Interest Law Center, Inc., and Law Offices of Bruce Afran, attorneys)

SUNDAR, P.J.T.C., (temporarily assigned)

This opinion decides defendants' motion to dismiss the above captioned complaint, which challenged the constitutionality of certain sections of L. 2021, c. 17 (hereinafter Chapter 17), for failure to state a cause of action for which relief can be granted under R. 4:6-2(e), and plaintiffs' responsive motion (labeled as a cross-motion) for summary judgment that Chapter 17 is facially unconstitutional. The opinion also addresses the pleadings filed by amici in support of plaintiffs' motion.

For the reasons set forth below, the court denies defendants' motion to dismiss the complaint under R. 4:6-1(e) and denies plaintiffs' motion for summary judgment. Because the court finds that as a matter of law, Chapter 17 is facially constitutional and injunction against application of this law is unwarranted, it dismisses the complaint with prejudice and denies injunctive relief.

PROCEDURAL HISTORY

Plaintiffs filed the complaint with an Order to Show Cause asking this court to void certain sections of Chapter 17, and preliminarily enjoin its enforcement. Those sections grant local property tax (LPT) exemption to nonprofit hospitals in

the State even if areas of the hospital are used by or leased to for-profit medical providers "for medical purposes related to delivery of health care services directly to the hospital," provided that the "portion of the hospital . . . is used exclusively for hospital services." N.J.S.A. 54:4-3.6j(b). In return, the hospital, as property owner, must pay an annual community service contribution (ACSC). N.J.S.A. 54:4-3.6j(c); N.J.S.A. 40:48J-1. These provisions also apply to a satellite emergency care (SEC) facility, which is one "owned and operated by a hospital, and which provides emergency care and treatment for patients." N.J.S.A. 54:4-3.6j(d). Section 4 of Chapter 17 retroactively bars the imposition of any omitted or regular assessments on such properties for tax years 2014 through 2020.[1] Plaintiffs' complaint alleges that these provisions (1) violate the Uniformity Clause of the New Jersey Constitution; (2) violate the Exemption Clause of the New Jersey Constitution; (3) invalidly permit payment of an ACSC as the New Jersey Constitution only permits payments in lieu of taxes; (4) constitute invalid special legislation; and (5) violate the Due Process and Equal Protection clauses.

Defendants (collectively referenced herein as the State) moved to dismiss the complaint for failure to state a cause of action under R. 4:6-2(e) on grounds the above

[1] Chapter 17 also amended N.J.S.A. 54:3-21(a) prohibiting a taxpayer from filing a LPT complaint if the taxpayer is "feeling discriminated against by the assessed valuation of other property in the county." Plaintiffs do not challenge the validity of this amendment.

provisions of Chapter 17 are constitutional. Plaintiffs opposed and cross-moved for summary judgment on grounds these provisions are unconstitutional. The State filed a reply, and plaintiffs filed a sur-reply brief as permitted by the court. By Order of January 3, 2022, the court, over the State's opposition, permitted participation of certain entities/individuals as amici, only as to issues impacting LPT assessments.[2] The State filed an opposing brief.

ANALYSIS

N.J.S.A. 54:4-3.6 titled "Tax exempt property" lists the types of nonprofit entities, property uses, and conditions to qualify for LPT exemption. Generally, "buildings" actually, or exclusively, or actually and exclusively, used for certain purposes, and the land required to support those buildings, are tax exempt. Ibid. Other requirements are that (1) "the buildings, or the lands on which they stand, or the . . . corporations or institutions using and occupying them as aforesaid, are not conducted for profit;" (2) the corporate claimant must "own[] the property in question"; (3) the corporate claimant is "incorporated or organized under" New

[2] Amici include the New Jersey Citizen Action; its Healthcare Program Director, Maura Collinsgru; American Federation of Teachers, New Jersey; its President, Donna Chiera; and Mark and Katherine Smith.

Jersey laws;[3] and, (4) the corporate claimant is "authorized to carry out the purposes on account of which the exemption is claimed." Ibid.

Thus, "[t]o secure" an LPT exemption, an entity "(1) . . . must be organized exclusively for the" statutorily allowed tax exempt purpose; "(2) its property must be actually [, or actually] and exclusively used for the tax-exempt purpose; and (3) its operation and use of its property must not be conducted for profit." Paper Mill Playhouse v. Millburn Twp., 95 N.J. 503, 506 (1984); see also Advance Housing, Inc. v. Teaneck Twp., 215 N.J. 549, 567-68 (2013) (same). Whether there is an actual, or actual and exclusive use of the property as required by the statute, is a fact specific inquiry. Advance Housing, Inc., 215 N.J. at 572-73.

A partial LPT exemption is merited "if any portion of" a building is "leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation." N.J.S.A. 54:4-3.6. The leased "portion shall be subject to taxation and the remaining portion only shall be exempt." Ibid. As interpreted by our Supreme Court, this partial exemption, "[o]n a purely facial level . . . means that property of a nonprofit exempt-entitled entity can be used for non-exempt purposes so long as the two purposes can be separately stated and accounted

[3] This requirement was held to violate the Equal Protection Clause of the Fourteenth Amendment, see WHYY, Inc. v. Glassboro Borough, 393 U.S. 117, 119 (1968), an issue not implicated here.

for and so long as the non-exempt use is never subject to the property tax exemption." Int'l Sch. Servs. Inc., v. West Windsor Twp., 207 N.J. 3, 23 (2011).

Statutory LPT Exemption for Hospitals

Until 1983, the LPT exemption for hospitals was incorporated in the exemption afforded to "buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women or children, or for religious, charitable or hospital purposes." See L. 1977, c. 370. In 1983, the Legislature provided an LPT exemption for property used for hospital purposes in a separate clause and eliminated the exclusive use requirement. L. 1983, c. 224, § 1. Further, the LPT exemption could be retained by a nonprofit hospital if only a portion of its property was leased to for-profit entities.[4] Ibid. Thus, an LPT exemption was granted to

> all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt;
> . . . .

[4] Apparently, this change was the legislative response to the decision in City of Long Branch v. Monmouth Med. Ctr., 138 N.J. Super. 524 (App. Div. 1976), denying LPT exemption to a hospital because a portion of the building was leased to a pharmacy, thus, violating the exclusivity requirement. See AHS Hosp. Corp. v. Town of Morristown, 25 N.J. Tax 374, 381, n.10 (Tax 2010) (hereinafter AHS I).

The legislative history explicated that the amendment was:

> to permit certain hospitals to lease space within the facility and retain its tax exempt status on the remainder of the property. Occasionally, there are portions of hospital property which are not being fully utilized. That space could be rented to nonemployee physicians and other health care related professions to provide a service within the hospital utilizing hospital equipment and laboratory services. This would produce rental income for the hospital and allow it to maximize the investment in laboratory services and equipment, all of which would serve to reduce total health care costs.
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> [Assemb. Rev. Fin. and Approp. Comm. Statement to A. 1974 (Dec. 13, 1982).]

See also Roman Catholic Archdiocese of Newark v. East Orange City, 17 N.J. Tax 298, 319 (Tax 1998) (law "granted a partial exemption to hospitals to maximize investment returns and reduce total health care costs"), aff'd, 18 N.J. Tax 649 (App. Div. 2000); Jersey Shore Med. Ctr. v. Neptune Twp., 14 N.J. Tax 49, 57-58 (Tax 1994) ("the intent of the Legislature in 1983 . . . was to make it easier to qualify for the hospital . . . exemption[]").[5]

[5] A partial exemption had been previously granted to properties used for educational purposes. L. 1977, c. 370. Permitting tax-exempt educational institutions "to lease a portion of [their] property to organizations or businesses which do not have tax-exempt status" and still retain the tax exemption on the non-leased portion was so that "colleges" could "rent part of their facilities to private retail establishments, such as banks or fast food operations, for the convenience of their students." Assemb. Banking & Ins. Comm. Statement to A. 3260 (Nov. 28, 1977); Sponsors' Statement to A. 3260 (proposed law "would permit a college, school or other institution, which rents out a portion of its facilities to a private retail establishment such as a bank, dry

By L. 1993, c. 166, the Legislature amended N.J.S.A. 54:4-3.6 to include a definition of "hospital purposes." The definition does not really define, but simply includes certain facilities that qualify for LPT exemption under the hospital purposes clause. The amendment's goal was to ensure that nonprofit facilities for seniors would be tax-exempt. Assemb. Approp. Comm. Statement to A. 2048 (Feb. 22, 1993) (while "nonprofit health care facilities for the elderly may be exempt from [LPT] under general provisions of current law, there [was] no explicit exemption for such facilities").

Trial Court's Decision in AHS Hosp. Corp. v. Town of Morristown

In AHS Hosp. Corp. v. Town of Morristown, 28 N.J. Tax 456 (Tax 2015) (hereinafter AHS II), the Tax Court ruled that the entire portion of the property used as a hospital did not qualify for the exemption. That ruling was based on extensive factual findings. Id. at 466 (the court's "determination is based substantially on a failure of the evidence . . . [and] the Hospital has failed to meet its burden of proof under law establishing that it meets the criteria to qualify for the exemption").

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cleaner, barber, etc., intended as a service and convenience to the students, to retain its tax exempt status on the remainder of said property").

In 1985, the partial exemption was extended to properties actually used "for the moral and mental improvement of men, women and children." L. 1985, c. 395. It was "believed" that the "number of these lease arrangements" were "small," nonetheless it provided "an opportunity for municipalities to collect some tax revenue from a property that might otherwise remain exempt from taxation." Fiscal Note, Sen. Rev. Fin. and Approp. Comm. Statement to A. 2246 (May 6, 1985).

The court found that plaintiff hospital failed prongs two and three of the three-prong test under N.J.S.A. 54:4-3.6 because, (1) the court was "unable to discern between the non-profit activities carried out by the Hospital on the Subject Property, and the for-profit activities carried out by private physicians;" (2) the hospital had entangled and commingled its activities with various for-profit entities, therefore it impermissibly "operated and used its property for a profit-making purpose," which "advanced the activities of for-profit entities;" and (3) the contracts between the hospital and physicians proved "a profit-making purpose." Id. at 501, 513-14, 523-26. Based on the evidence, the court also ruled that the auditorium, employee fitness center, and the visitor's garage, qualified for an LPT exemption, but areas used for operation of a gift shop by a nonprofit group, a daycare, and a cafeteria operated by a for-profit entity, did not. Id. at 527-36. The court then observed:

> if the property tax exemption for modern non-profit hospitals is to exist at all in New Jersey going forward, then it is a function of the Legislature and not the courts to promulgate what the terms and conditions will be. Clearly, the operation and function of modern non-profit hospitals do not meet the current criteria for property tax exemption under N.J.S.A. 54:4-3.6 and the applicable case law.
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> [Id. at 536.]

Notably, the court acknowledged that the phrase "hospital purposes" has been construed by case law to broadly address any medical service rendered to a patient during a hospital stay, and pre- or post-admission, and found "instructive" the

expansive definitions that cover "many health-related pursuits of a modern hospital." Id. at 532-33 & n.71 (citations omitted).

Legislative Response to AHS II

Soon after the trial court's decision in AHS II, the Legislature introduced a series of bills to retain/maintain the LPT exemption for nonprofit hospitals, none of which were enacted.[6] As a result of the AHS II decision, the number of complaints filed by taxing districts seeking to "challeng[e] the property tax exempt status held by other nonprofit hospitals throughout the State," substantially increased. Sponsors' Statement to A. 1135 11 (L. 2021, c. 17). In response, the Legislature introduced a bill in 2020 that sought to mitigate the effects of the AHS II decision despite "for-profit medical services [being] commonly provided at nonprofit hospitals." Ibid.[7] This conflict between the LPT exemption and the rendition of services by for-profit medical providers on hospital property "create[ed] uncertainty and rais[ed] questions over what level of support these nonprofit hospitals should

[6] In 2015, bills were introduced to counter the ruling in AHS II. See A. 4903 (Dec. 2015); S. 3299 (Dec. 2015). Subsequent bills were also introduced in 2016, 2017, and 2018.

[7] It was noted that AHS II denied the LPT exemption "because nonprofit and for-profit medical services were provided throughout the hospital in a commingled manner" and "this commingling [was] a violation of" N.J.S.A. 54:4-3.6 since the taxing "authorities" could not "distinguish taxable for-profit uses of the hospital property from tax-exempt nonprofit uses of the property." Sponsors' Statement to A. 1135 11 (L. 2021, c. 17).

provide to their host communities." Ibid. The proposed law was intended to "resolve these issues by establishing a clear and predictable system in which complex, modern nonprofit hospitals make a reasonable contribution to their host communities, while providing these hospitals a measure of tax relief to help them continue to fulfill their nonprofit mission." Ibid. Thus, the Bill "would reinstate the property tax exempt status of nonprofit hospitals, including [SEC] facilities, with for-profit medical providers on site," retroactive to tax year starting 2014 so that a taxing district could not impose an omitted assessment on a nonprofit hospital. Id. at 10, 12. The retroactivity was "intended to render moot tax appeals concerning the assessment of a nonprofit hospital as an omitted assessment or a regular assessment for tax years 2014 through 2020." S. Budget and Approp. Comm. Statement to First Reprint of A. 1135 2 (Oct. 22, 2020).

Nonprofit hospitals or SEC facilities "would instead . . . pay" the taxing district an ACSC "to offset the costs of municipal services which directly benefit these hospitals and their employees." Assemb. Approp. Comm. Statement to A. 1135 1 (Sep. 17, 2020). The purpose was to "reimburse counties and municipalities for the cost of public services provided by these levels of government to hospitals, not just public safety services." Id. at 3.

A committee amendment dated October 22, 2020, clarified that "any portion of a hospital or a [SEC] facility that is leased to or otherwise used by a profit-making

medical provider would only be exempt from property taxation if the lease or use is for medical purposes related to the delivery of health care services directly to the hospital." See S. Budget and Approp. Comm. Statement to First Reprint of A. 1135 3 (Oct. 22, 2020). After a further committee amendment of December 14, 2020, the third version (reprint) of A. 1135 was signed into law effective February 22, 2021 (except for the provision barring omitted assessments which was retroactive and applied to tax years 2014 through 2020).

A summary of the challenged Chapter 17 provisions are as follows:

(1) Amendment to N.J.S.A. 54:4-3.6

> Buildings which are exempt under new N.J.S.A. 54:4-3.6j are excepted from the existing LPT exemption, however, exemption continues as before, including partial exemption, for buildings actually used in the "work of" an entity organized exclusively for hospital purposes.

(2) New Section, N.J.S.A. 54:4-3.6j(a)-(d)

> (a) Real property "used as a hospital or [SEC] facility," and owned by a nonprofit entity, which is organized under Title 15 or 15A "exclusively for hospital purposes" is tax exempt. The exemption will be partial, i.e., "any portion" which is "leased to a profit-making organization or otherwise used for purposes which are not themselves exempt from taxation" will be taxed.
>
> (b) The partial taxability will not apply if the portion (1) is "leased to or otherwise used by a profit-making medical provider for medical purposes related to the delivery of health care services directly to the hospital," and (2) the leased/used portion "is used exclusively for hospital purposes."

(c) The owner of the nonprofit hospital and/or SEC facility will be assessed an ACSC pursuant to new section, N.J.S.A. 40:48J-1.

(d) Definitions of (1) hospital - general acute care licensed under N.J.S.A. 26:2H-1 et seq. whose facilities and services are approved and licensed by the Department of Health, for the diagnosis, treatment, or care of patients but excludes a public hospital (i.e., owned or operated by a governmental entity directly or as an instrument of the government); (2) Medical Provider - "an individual or entity" who/which is licensed or certified to "provide health care services." Examples include: "physician, physician assistant, psychologist, pharmacist, dentist, nurse, nurse practitioner, social worker, paramedic, respiratory care practitioner, medical or laboratory technician, ambulance or emergency medical worker, orthotist or prosthetist, radiological or other diagnostic service facility, bioanalytical laboratory, health care facility, or other limited licensed health care professional" and "administrative support staff" of the medical provider; and (3) SEC facility.

(3) New Section, N.J.S.A. 40:48J-1(a) - (g)

(a) (1) - (3): Imposes the ACSC on the owner of a nonprofit hospital or an SEC facility. The contributions must be made directly to the municipality where the licensed beds of a hospital are located, or where the SEC facility is located. A pre-existing voluntary payment agreement between a hospital and a taxing district will continue, however, at the statutorily prescribed ACSC amount. Voluntary agreements for additional payments are not barred.

(b) (1) - (3): The ACSC for tax year 2021 is $3 per day per licensed bed at the hospital in tax year 2020, or $300 per day in tax year 2020 for an SEC facility. The amounts increase each year thereafter by 2% over the prior year. In no event can the number of licensed beds in a hospital be less than the number of licensed beds in existence on January 1, 2020. Payments made by the hospital or SEC facility under a voluntary agreement in the prior tax year to "compensate for any municipal services benefitting the occupants and premises of the" hospital or SEC facility, will reduce the statutorily due ACSC. Amounts are payable in quarterly installments.

(c) Unpaid contributions become a governmental lien on the hospital or SEC facility property.

(d) A taxing district must remit 5% of the received ACSC or the reduced voluntary payment to the county in which it is located.

(e) Delegates rule making authority to effectuate Chapter 17 to the Commissioner of Health in consultation with the Department of Health (Healthcare Facilities Financing Authority) and Department of Community Affairs (Local Government Services).

(f) Exempts hospitals from paying the ACSC if in the prior year, patients were not billed for "inpatient or outpatient professional or technical services rendered at the hospital" and at least 12% of the hospital's expenses for the prior three years (reported on IRS Form 990) were for "community benefit." The assessor should notify the hospital on or before December 31 of the prior year, that it is exempt from paying the community service contribution for the next tax year starting January 1.

(g) Defines the terms (1) Hospital (same as in new N.J.S.A. 54:4-3.6j); (2) licensed bed (acute care bed for patient care of an acute care hospital as approved by the Commissioner of Health, excludes such beds "not commissioned for use," and also "skilled nursing, psychiatric, sub-acute, and newborn beds"); (3) Medical Provider (same as in new N.J.S.A. 54:4-3.6j); (4) Owner - a nonprofit entity organized under Title 15 or 15A of the New Jersey statutes; (5) SEC facility (same as in new N.J.S.A. 54:4-3.6j); and (6) Voluntary Agreement which is "any payment in lieu of taxes agreement or other agreement entered into between the" property owner and the taxing district "for the purpose of compensating the municipality for any municipal services the municipality provides to the hospital."

(4) New Section 40:48J-2

Creates the Nonprofit Hospital Community Service Contribution Study Commission to analyze the financial and administrative effects of Chapter 17.

(5) Section 4 of Chapter 17

> Bars imposing, or pursuing litigation to impose, omitted or regular assessments for tax years 2014-2020 on any property which would have been exempt under new N.J.S.A. 54:4-3.6j had it been effective in those tax years. If a hospital had paid taxes pursuant to such assessments due to settlement of litigation or other agreements, the taxing district need not make refunds.

APPROPRIATENESS OF DECIDING THE MATTER VIA MOTIONS

The State moved to dismiss the complaint with prejudice under R. 4:6-2(e) for failure to state a cause of action for which relief is available because the matter "did not involve any factual questions" and because the challenged provisions of Chapter 17 in the complaint are constitutional. Such a motion requires the trial court to examine the allegations facially to discern whether "plaintiff has pled a legally sufficient cause of action," by using "a generous and hospitable approach" since "the plaintiff is entitled to every reasonable inference of fact" at the very commencement of a case. Mack-Cali Realty Corp. v. State, 250 N.J. 550, 553 (2022) (Albin, J., dissenting) (citation and internal quotation marks omitted), aff'g 466 N.J. Super. 402, 424 (App. Div. 2021). Therefore, "motions for failure to state a claim under Rule 4:6-2(e) 'should be granted in only the rarest of instances.'" Ibid. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772 (1989)).

The allegations in the complaint amply demonstrate the cause of action: the facial unconstitutionality of Chapter 17. The relief sought is also evident - striking

of the challenged provisions of Chapter 17 as invalid. Therefore, dismissal of the complaint under the liberal standards of R. 4:6-2(e) is unwarranted.

Plaintiffs' cross-motion for summary judgment in opposition to the State's motion is procedurally a proper response. See R. 1:6-3(b) (a non-movant can file a cross-motion along with an opposition in response to a motion to dismiss). Only "germane cross-motions [will] relate back to the return date of the original motion." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 1:6-3(b) (2022). The cross-motion relied upon the same facts as did the State in its dismissal motion and sought the same relief as in the complaint: a declaration of the unconstitutionality of Chapter 17. Facts as to the law's genesis and passage are undisputed by either the State or plaintiffs. The State in its reply/opposition to plaintiffs' summary judgment motion, did not dispute facts which would prevent the matter from being decided as a matter of law. As such, it is appropriate to decide plaintiffs' facial challenge to Chapter 17 by way of the present motions as a matter of law.

STANDARD OF REVIEW

Plaintiffs, with amici's support, challenge the provisions of Chapter 17 outlined above as being facially unconstitutional since they do not operate constitutionally under any circumstance required of the Uniformity, Exemption, and Due Process clauses of the New Jersey Constitution. In addition, plaintiffs charge that Chapter 17 invalidly permits ACSC payments, is special legislation, and the

retroactivity provision is manifestly unjust. The State argues that Chapter 17 is constitutional under any and all circumstances.

When deciding a facial constitutional challenge, a court should "afford every possible presumption in favor of an act of the Legislature." Town of Secaucus v. Hudson Cty. Bd. of Taxation, 133 N.J. 482, 492 (1993). This is especially so where the enactment involves "the field of taxation." Id. at 493. "Only a statute clearly repugnant to the constitution will be declared void." Id. at 492-93 (citation and internal quotation marks omitted). In this regard, not just the legislatively stated purpose, but "any conceivable rational basis" can be used to "uphold" the legislation. Mack-Cali Realty Corp., 466 N.J. Super. at 424.

"A taxing statute is not facially unconstitutional if it operates constitutionally in some instances." General Motors Corp. v. Linden City, 150 N.J. 522, 532 (1997) (citation omitted). Plaintiffs must therefore show "that no set of circumstances exist under which the" challenged provisions "would be valid." Whirlpool Properties, Inc. v. Dir., Div. of Taxation, 208 N.J. 141, 175 (2011) (citing and quoting United States v. Salerno, 481 U.S. 739, 745 (1987)).

UNIFORMITY CLAUSE

The Uniformity Clause of the New Jersey Constitution provides as follows:

> Property shall be assessed for taxation under general laws and by uniform rules. All real property assessed and taxed locally or by the State for allotment and payment to taxing districts shall be assessed according to the same standard

> of value, except as otherwise permitted herein, and such real property shall be taxed at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.
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> [N.J. Const. art. VIII, § 1, ¶ 1(a).]

The State argues that the ACSC is not a tax because it is imposed to recompense a municipality for services provided to a nonprofit hospital and/or SEC facility; it is measured by bed count or number of days; and unlike the LPT, the contributions are not used to fund school district budgets. If anything, the State argues, the ACSC is akin to an annual charge which is impervious to the Uniformity Clause (relying upon 2nd Roc-Jersey Assocs. v. Town of Morristown, 158 N.J. 581, 591-92 (1999) that "the Uniformity Clause . . . is inapplicable to special assessments," and "[a]ssessments are not such taxes as are referred to in the various clauses of the constitution and they are neither embraced, nor intended to be embraced in them") (citation and internal quotation marks omitted)).

Plaintiffs argue that a special assessment applies to recoup costs of specific improvements such as sewer lines, thus, cannot and do not encompass ACSCs. Rather, they argue, the ACSC is a tax because it is an annual charge used to pay for public services (police and fire protection) provided to any resident (individual or commercial). They also contend that the ACSC is a type of payment in lieu of taxes (PILOT) because Chapter 17 was enacted to provide tax relief to nonprofit hospitals, and legislative history notes that the nonprofit hospitals and SEC facilities "would

instead" have to pay the ACSC. However, they say, the ACSCs are an "ultra-vires" PILOT because PILOTs are constitutionally authorized but ACSCs are not.

Initially, the court is unpersuaded that the ACSC is an ultra vires PILOT. The New Jersey Constitution does not specifically authorize a PILOT program. Rather, it permits the Legislature to enact laws authorizing local governments to adopt ordinances that afford LPT exemptions or abatements for buildings in need of rehabilitation and the land thereon for a finite period. See N.J. Const. art. VIII, § 3, ¶ 1; N.J. Const. art. VIII, § 1, ¶ 6. The statutes implementing these constitutional provisions require PILOTs based on varied computations and conditions. See generally N.J.S.A. 40A:20-9; 20-12; 20-12(b) (known as the Long-Term Exemption Law); N.J.S.A. 40A:21-10 (known as the Five-Year Exemption and Abatement Law). Here, as evidenced by the proceedings of the 1947 Constitutional Convention (see below for discussion under Exemption Clause of the New Jersey Constitution, N.J. Const. art. VIII, § 1, ¶ 2), nonprofit hospitals were clearly included in the retention of the historical exemptions provided to among others, properties used for charitable purposes, which included hospital uses. This constitutional permission is implemented under Chapter 17 which imposes the ACSCs.

Note that unlike many in lieu payments, the ACSC is not based on the assessed value of local property. Cf. N.J.S.A. 54:4-2.2e (the State is liable "for in lieu tax payments" for State owned property in a municipality, which is "calculated by

applying the effective local purpose tax rate of the municipality . . . to the aggregate amount of State property" which liability should be $1,000 or more but no "greater than an amount equal to thirty-five percent of the local purpose tax levy"); N.J.S.A. 5:10-18 (to avoid loss of revenue to municipalities, the authority is liable for annual "payments in-lieu-of-taxes" computed based on local property taxes); N.J.S.A. 40A:20-12; 21-10 (annual service charges imposed for redeveloped or rehabilitated properties).[8] Unlike in lieu payments, Chapter 17 permits additional contributions pursuant to voluntary agreements (pre-or post-Chapter 17) between a municipality and a nonprofit hospital or an SEC facility, and does not abrogate voluntary community contribution agreements executed with a nonprofit hospital prior to Chapter 17's enactment (provided the payments equal the statutory amount).

[8] The Long-Term Exemption Law requires a developer pay an "annual service charge" (ASC) "in lieu of any taxes to be paid" on the real property. N.J.S.A. 40A:20-12(b)(1). The schedule of payments over the exemption period requires, among others, the higher of the calculated amount (based on gross revenue or on the project's cost) or twenty percent; forty percent; sixty percent and eighty percent; respectively "of the amount of taxes otherwise due on the value of the land and improvements." N.J.S.A. 40A:20-12(b)(2)(b)-(e). If the calculated ASC is below the "total taxes levied against all real property in the area covered by the project in the last full tax year in which the area was subject to taxation," then that tax should be paid. N.J.S.A. 40A:20-12(b).

Under the Five-Year Exemption and Abatement Law, an annual tax payment "in lieu of full property tax payments" is computed, among others, on a "tax phase-in" basis which is $0 in year one after project completion, then an amount which is "not less than" twenty percent; forty percent; sixty percent and eighty percent "of taxes otherwise due" for each respective years two through five. N.J.S.A. 40A:21-10.

N.J.S.A. 40:48J-1(a)(2); (a)(3). The ACSC also does not apply in certain instances. N.J.S.A. 40:48J-1(f). All these factors render the ACSCs unlike a PILOT, let alone an ultra vires PILOT.

Even if the ACSCs are seen as some type of a PILOT, they are not a tax subject to the restraints of the Uniformity Clause simply because the ACSCs are intended to recompense taxing districts for the cost of municipal services provided to the nonprofit hospitals/SEC properties. Reimbursements to municipalities for public services are not automatically deemed to be taxes. Cf. Rutgers v. Piscataway Twp., 1 N.J. Tax 164, 170 (Tax 1980) ("The obvious legislative purpose in providing for payments in lieu of tax to municipalities was to compensate them in some fashion for their loss of tax revenues attributable to the location of state property within their boundaries."). "[P]ayments in lieu of taxes are dramatically different from local property taxes" since the latter funds "the cost of local municipal government, . . . county government and the municipal share of the cost of local school districts" while the former "are designed to compensate municipalities for one small portion of the total municipal tax burden, that of the cost of local services provided to State property." Rutgers Univ. Legis. Affairs Council, Inc. v. Thompson, 12 N.J. Tax 642, 662 (Tax 1992). Thus, "[s]imply stated 'property taxes' and 'in lieu payments' are neither nominally nor functionally the same." Id. at 663. Thus, while the ACSC

is not a PILOT, let alone an ultra vires PILOT, it is also not a LPT for purposes of the Uniformity Clause.

Plaintiffs argue that the ASCS is a tax because the Legislature enacted Chapter 17 to "reinstate the property tax exempt status of nonprofit hospitals, including [SEC] facilities, with for-profit medical providers on site" and "provid[e]" these entities with "a measure of tax relief." See Sponsors' Statement to A. 1135 10-11 (L. 2021, c. 17). The court is unpersuaded. These legislative statements do not allow for a conclusion that all nonprofit hospitals are now initially taxable, thus, removed from the Exemption Clause of the New Jersey Constitution and from N.J.S.A. 54:4-3.6, and will be granted tax-exempt status upon payment of the ACSCs. Rather, the court reads these statements as the legislative intent to maintain the LPT exemption historically afforded to nonprofit hospitals so they can continue to fulfill their invaluable community services, but simultaneously recognizing that the taxing districts where those facilities are located, bear costs associated with the nonprofit hospitals provision of services, and therefore having these entities to reimburse the municipalities for a portion of those costs. Otherwise, the Legislature would have stated that nonpayment of the ACSC will result in restoring a nonprofit hospital's local property taxable status. It did not. Cf. N.J.S.A. 40A:21-12(a) (failure to comply with the requirements for obtaining an abatement, such as paying the annual ASC payments means that "the tax which would have otherwise been payable for

each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted"). The ACSCs apply to a nonprofit hospital-owned properties that were always, and continue to be tax exempt, and to SEC facilities which are also incipiently tax exempt.

Plaintiffs contend that the ACSCs are functionally equivalent to an agreement that was struck down as void in the unpublished opinion, Nunnermacker v. City Council of Hackensack, BER-L-005974-16 (Law Div. May 6, 2019), therefore, the ACSCs are also unenforceable.[9] However, in that case, a municipal resolution granted a partial tax exemption to a hospital without any statutory authority, therefore, the court ruled that an agreement without such authority was void. Here, the Legislature, acting under the authority afforded it under the Exemption Clause of the New Jersey Constitution, enacted Chapter 17. While this does not mean that Chapter 17 is immune from challenge, the unpublished opinion or its reasoning does not provide the fodder for such an attack.

In sum, the court finds that the ACSC is not a local property tax for purposes of the Uniformity Clause simply because it is intended to compensate municipalities

[9] Unpublished opinions are not precedential not to be cited "by any court." R. 1:36-3. The court is citing to the case since plaintiffs relied on the same as persuasive authority.

for local services provided to the nonprofit hospitals/SEC facilities.[10] Hospital properties are not "assessed" differently for LPT purposes because even prior to the enactment of Chapter 17, an LPT assessment was imposed on nonprofit hospital properties, just like all other tax-exempt property, but there was no attendant tax because the properties are tax exempt.

However, this conclusion does not require a denial of plaintiffs' cross-motion for summary judgment. The pivotal issue here is whether Chapter 17, on its face, continues the tax exemption historically afforded nonprofit hospitals in accordance with constitutional principles. See, e.g., New Jersey State League of Municipalities v. Kimmelman, 105 N.J. 422, 433-35 (1987) (although the Uniformity Clause bars "discriminatory burdens" as to real property taxes, it does not automatically trump the legislative "power to exempt" which was historically provided by the Legislature for public purposes "then seen as educational, charitable, and religious purposes"). Therefore, regardless of the court's finding that the Uniformity Clause is

[10] The State's reliance on 2nd Roc-Jersey Assocs., that an assessment is not a tax even if it is to pay for intangible local services such as fire protection or garbage disposal, see 158 N.J. at 592-95, while reasonable, is not persuasive. This is because that case (1) involved special assessments, which is commonly understood as payments for recouping the cost of certain improvements or public works made outside of the normal course; and (2) involved improvements to a specific area in the municipality for the specific purpose of attracting/enhancing businesses and business activities taxing district, pursuant to a statutorily authorized ordinance. Those facts and circumstances are absent here.

inapplicable to the ACSC, the court must examine whether Chapter 17 violates the Exemption Clause of the New Jersey Constitution.

In this regard, the court notes that amici's argument that "[v]iewed simply as a property tax exemption for not-for-profit hospitals that existed prior to the 1947 Constitution, the statute violates the constitutional uniformity mandate" is seemingly not directed at the Uniformity Clause. Rather, this argument centers upon Chapter 17's alleged violation of the Exemption Clause of the New Jersey Constitution. Therefore, the section of amici's brief on Uniformity Clause will be addressed below.

EXEMPTION CLAUSE

In New Jersey, all real property is subject to an annual LPT unless it has been expressly exempted from taxation. N.J.S.A. 54:4-1. Our "Legislature may exempt certain property from the Uniformity Clause either by general laws or for the specified purposes enumerated in the exemption clause." 2nd Roc-Jersey Assocs., 158 N.J. at 590. The Exemption Clause provides as follows:

> Exemption from taxation may be granted only by general laws. Until otherwise provided by law all exemptions from taxation validly granted and now in existence shall be continued. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

[N.J. Const. art. VIII, § 1, ¶ 2.]

The Exemption Clause makes clear that (1) a specific individual, entity, or industry cannot be granted tax exemption; (2) the Legislature can alter or repeal any tax exemption; and (3) the Legislature cannot repeal or alter exemptions granted for property exclusively used for the listed purpose(s), when such property is owned by a nonprofit entity that is organized and conducted exclusively for such purpose(s).

The State and amici provided extensive history of how the Exemption Clause came into existence based on the 1947 Constitutional Convention colloquy. Per the State, nonprofit hospitals were historically tax exempt even if "hospital use" was not specifically delineated in the Exemption Clause, therefore, while the Legislature can define, amend, or modify an exemption, it cannot take away, i.e., legislatively repeal, the LPT exemption for nonprofit hospitals, which is what Chapter 17 accomplishes. In this connection, the State notes that even historically, hospital purposes were not subsumed by, i.e., contingent upon, being charitable purposes, rather, hospital purposes were deemed LPT exempt-worthy separate and apart from charitable purposes. Per the State, to the extent the use by for-profit medical providers is other than exclusively for hospital purposes as mandated by Chapter 17, those challenges are not being raised here by plaintiffs, and are better suited on an as-applied challenge to the grant of an LPT exemption, which must await another day in another forum.

The State also notes that the phrases "conducted exclusively for one or more of such purposes and not operating for profit" in the Exemption Clause meant only that while nonprofit hospitals can earn monies in excess of operational costs (i.e., it need not operate at a loss to qualify as a nonprofit), any such earnings should only be used/dedicated for nonprofit use/purposes. The "not operating for profit" requirement of the Exemption Clause was not intended to mean a potentially abusable "net profit" or surplus but was to be read in conjunction with the terms "organized and conducted exclusively" for a nonprofit purpose, which quoted phrase should be the "dominating factor in the determination of whether" nonprofit entities "are really charitable institutions." See Proceedings of the 1947 Constitutional Convention, Vol. I, p. 740. The focus, the State notes, was "the underlying and fundamental purpose for which the organization was created, and its method of operation after creation," and thus to only ensure that no monies earned by a nonprofit entity would be used for anything other than the entity's nonprofit purpose. Id. at 740-42.

Per plaintiffs, Chapter 17 violates both the "use" and the non-operation/conduct "for profit" requirements because it allows for-profit entities to use the hospital's premises, thus, to conduct for-profit activities at those premises. These violations, plaintiffs argue, exist although Chapter 17 limits for-profit medical providers use and/or occupation of the premises "exclusively for hospital purposes"

and although the use/occupation is to be "for medical purposes related to the delivery of health care services directly to the hospital." These latter conditions, per plaintiff, are illusory because phrases such as "hospital purposes" are undefined, and can include any activity, whereas "hospital purposes" as defined by precedent, are narrow and limited. Therefore, plaintiffs argue, Chapter 17 now per se exempts what should never be exempt from LPT.

Amici argue that the Exemption Clause cast in stone a condition for continued exemption: that property must be used only for, among others, charitable purposes. Therefore, they maintain, when Chapter 17 permits for-profit medical providers to use or occupy portions of a nonprofit hospital's property, it can only mean that the property is not being used for charitable purposes. In other words, they contend, a LPT exemption cannot be sustained unless the hospital purposes are charitable, and this can never be accomplished under Chapter 17 when a for-profit entity uses the premises. See Presbyterian Home at Pennington, Inc. v. Pennington Borough, 409 N.J. Super. 166, 187 (App. Div. 2009) ("the Exemption Clause was intended to retain the Legislature's power to grant exemptions in the historical mold of the public purpose—then seen primarily as educational, charitable, and religious purposes") (citation and internal quotation marks omitted).

The court does not need to delve into the history of the exemption for hospitals. What it does note is that the Exemption Clause is not so rigid that the

Legislature is without any authority or discretion in the Clause's application. This is evident because the Exemption Clause permits the Legislature to pass general laws for grant of an LPT exemption, discontinue any validly granted exemption in existence in 1947, and alter or repeal an exemption "except" for property used for religious, educational, charitable, or cemetery purposes, with the Legislature being able to tailor or define such uses. Thus, for instance, the exclusivity requirement of the Exemption Clause is legislatively applicable to only the organizational status of the nonprofit entity, while the "actual use" legislatively suffices for LPT exemption purposes. See N.J.S.A. 54:4-3.6 (exempts "all buildings actually used in the work of" nonprofit entities which must "exclusively organized for hospital purposes").

The State is correct that hospital purposes, while aligned with charitable purposes were not deemed to be one and the same since a property merited exemption if it was used for hospital purposes. For instance, the "original exemption law of 1918, [L. 1918, c. 236, § 203, ¶ 4] stated, in part, that the exemption applied to 'all buildings actually and exclusively used in the work of associations and corporations organized exclusively for the moral and mental improvement of men, women or children, or for religious, charitable or hospital purposes.'" Presbyterian Home, 409 N.J. Super. at 188. As the Appellate Division noted, while "the framers of the 1947 Constitution clearly understood hospital purposes to be part of the charitable, religious, and educational tradition encompassed within the brief

language of the Exemption Clause," prior legislation left no doubt that "hospital purposes were distinguishable from charitable ones," with "each as worthy of exemption from taxation." Id. at 187-88. Thus, "[t]he types of exemptions recognized by the Legislature at the time of the 1947 Constitution did not require that they provide their services on a charitable basis" but "merely required that providers recognized as worthy of exemption not be operated for a profit." Id. at 188.

Chapter 17 does not per se prohibit or forbid taxability of nonprofit hospitals because it did not repeal the partial exemption afforded under N.J.S.A. 54:4-3.6. Thus, and except as to nonprofit hospital/SEC properties covered under new section, N.J.S.A. 54:4-3.6j, "all buildings . . . actually used in the work of associations and corporations organized exclusively for hospital purposes," are tax-exempt, "provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt." N.J.S.A. 54:4-3.6. Even under new section N.J.S.A. 54:4-3.6j, real property owned by a nonprofit entity which is "organized exclusively for hospital purposes," is exempt when the property is "used as a hospital" or an SEC facility but is only partially exempt "if any portion of the property is leased to a profit-making organization or otherwise used for purposes

which are not themselves exempt from taxation." N.J.S.A. 54:4-3.6j(a). Thus, Chapter 17 does not provide for a blanket bar of denial of a LPT exemption to any nonprofit hospital. For instance, portions of the property used to operate a for-profit venture by a third-party (e.g., a coffee shop, spa, or a gift store) would continue to be taxable.

The legislative intent underlying the exception to the partial exemption in N.J.S.A. 54:4-3.6j(b) was to "reinstate the property tax exempt status" of hospitals "with for-profit medical providers on site." This indicates that the Legislature acted to prevent loss of an LPT exemption to nonprofit hospitals by carefully delineating the uses that qualify for exemption, thus ensuring that nonprofit hospitals continue their public services, nonprofit endeavor, and organizational purposes. Such an objective is eminently rational.

That N.J.S.A. 54:4-3.6 prior to the enactment of Chapter 17, taxed portions of a nonprofit hospital property used by or leased to for-profit entities does not require a conclusion that Chapter 17 invalidly provides an LPT exemption. Exemption laws do not have to be static. It is universally acknowledged that modern hospitals do not operate as they did historically. See, e.g., Hunterdon Med. Ctr. v. Readington Twp., 195 N.J. 549, 553-54 (2008) ("the analysis for 'hospital purposes' must take into consideration the many medical pursuits permitted to the 'modern' hospital in New Jersey," and that treatment is offered at onsite and/or offsite facilities); Kuchera v.

Jersey Shore Family Health Ctr., 221 N.J. 239, 251-52 (2015) ("courts throughout the country have recognized the evolving character of hospitals and healthcare" and "[t]he modern hospital is now a place where members of the community not only seek emergency services but also preventative services, therapy, educational programs, and counseling"); see also Presbyterian Home, 409 N.J. Super. at 189 (the 1993 amendment to the "hospital purposes" provisions under N.J.S.A. 54:4-3.6 was "in keeping with the recognition that the role of medicine has expanded far beyond that contemplated by the legislators who passed the original 1918 source statute"). Indeed, even AHS II detailed the realities of modern-day nonprofit hospitals and accepted the same vis-à-vis the precedential broad reach of the phrase "hospital purposes," and invited the Legislature to change the LPT exemption in this regard. Thus, the Legislature's decision to continue the LPT exemption for nonprofit hospitals using medical services of for-profit providers in furtherance of the hospitals' delivery of medical services to the public, is in step with today's mode of operations, and does not translate to a violation of the Exemption Clause.

Nor is it aberrant to support provision of the several and varied medical services to the public by the continued availability of a LPT exemption to a nonprofit hospital (provided there is no diversion of the hospital's operational profits to private pockets). See, e.g., Hunterdon Med. Ctr., 195 N.J. at 569 ("Although" exemption statutes should "be strictly construed against those seeking exemption, the statutory

language and intent to grant the exemption should not be thwarted.") (citation and internal quotation marks omitted); cf. Horizon Blue Cross Blue Shield of New Jersey v. State, 25 N.J. Tax 290, 305 (Tax 2009) (a statutory amendment need not be "consistent with the original intent of the statute . . . in order for there to be a legitimate state purpose which supports the amendment"), aff'd, 425 N.J. Super. 1, 17-18 (App. Div. 2012). Indeed, other statutes have provided an LPT exemption when medical services are provided by doctors in less affluent taxing districts without the requirement that the caregiver be a nonprofit entity. See, e.g., N.J.S.A. 54:4-3.160 (a municipality can, by resolution, provide LPT exemption to a building used as a "medical or dental primary care practice" if it is located in an Health Enterprise Zone (HEZ) within the municipality); N.J.S.A. 54:4-3.161 (if property exempted under N.J.S.A. 54:4-3.160, is leased "to a tenant" who/which is "engaged in the medical or dental primary care practice," then the tenant will receive a rebate in "an amount equal to the exemption" whether as a "lump sum or rebated through discounted rental payments."); N.J.S.A. 54A:3-8 (a "taxpayer . . . providing primary care" in an HEZ is allowed to deduct the percentage of income received from the practice).[11]

[11] The list of municipalities which have an HEZ is listed in Technical Bulletin 56 (Sep. 2005) accessible at http://www.state.nj.us/treasury/taxation/pdf/pubs/tb/tb56.pdf. Elizabeth City and Vineland City, two plaintiffs herein, are included in the list.

Plaintiffs' focus is that by leasing a portion of the property to a for-profit medical provider, the nonprofit hospital is "conducting" a for-profit activity, and/or permitting the premises to be used by a third-party medical provider for the provider's for-profit activity. But the legislative focus of Chapter 17 was on the delivery of health care services directly related to the operation of the hospital and exclusively for hospital purposes, therefore, deeming the hospital as not conducting a for-profit activity. And by speculating that the for-profit medical provider is using the hospital's property to conduct its private for-profit business, plaintiffs ignore Chapter 17's specific conditions attached to the exemption, thus, brush aside the intent behind these conditions which is that the for-profit medical service provider cannot conduct his/her/its private practice to the general public, i.e., to someone who is not a hospital patient.[12] To the extent a taxing district has facts to show otherwise

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A "primary care practice" is defined as "the practice of family medicine, general internal medicine, general pediatrics, general obstetrics, gynecology, pediatric dentistry, general dentistry, public health dentistry, and any other areas of medicine or dentistry which the Commissioner of Health and Senior Services may define as primary care." N.J.S.A. 18A:71C-32. It also includes "the practice of a nurse-practitioner, certified nurse-midwife, and physician assistant." Ibid. A "primary care practitioner" is a "State-licensed or certified health care professional who has obtained a degree in allopathic or osteopathic medicine, dentistry, or another primary care profession at an undergraduate institution of medical, dental, or other primary care professional education, as applicable." Ibid. An annual application for the LPT exemption is required by the property owner. N.J.S.A. 54:4-3.160.

[12] Chapter 17 is thus different in its goals and objectives as compared to the 1983 legislation's reasoning for a partial exemption. See Assemb. Rev., Fin. and Approp. Comm. Statement to A. 1974.

(e.g., a for-profit medical provider conducts a portion of private practice at the hospital or SEC facility), Chapter 17 does not prevent the taxing district from challenging the grant (or defending the denial) of an LPT exemption.

Plaintiffs complain that no one knows the scope and reach of the words "exclusively hospital purposes" in N.J.S.A. 54:4-3.6j(b) and there are no regulations in this regard either, therefore, the quoted phrase is illusory, as would a litigational exercise in this regard. However, the lack of regulatory guidance or the lack of definition of "hospital purposes" in Chapter 17 does not prevent a challenge to the LPT exemption. Indeed, the lack of a statutory definition or regulations interpreting N.J.S.A. 54:4-3.6 did not prevent litigation in AHS II (and in other pending matters) on grounds the nonprofit hospital's premises were being used for the conduct of profit-making activities. The process of gathering facts and arguing that a particular use does not comport with the statute because it is not exclusively for hospital purposes can be lengthy and expensive, but it is no different than would be (and was) the process of gathering facts and arguing that a particular use is not exempt because it involved the operation and conduct of a for-profit activity. As the State correctly points out, such an as-applied challenge should not be resolved here, in a facial challenge. That in some instances, and based on the facts, the use may be exclusively for hospital purposes and in some instances may not, also demonstrates that plaintiffs' fail to meet their burden of showing that Chapter 17 is facially

unconstitutional. See, e.g., State v. Cameron, 100 N.J. 586, 593-94 (1985) (for a facial challenge to succeed, the challenged statute must be vague in every situation); Abbott v. Burke, 100 N.J. 269, 299 (1985) ("facial constitutional challenges to statutes should be judicially resolved, even where an as-applied challenge to a statute may strongly suggest initial agency adjudication") (citation omitted).

More importantly, Chapter 17 did not negate or change the requirement that the monies earned by the nonprofit hospital should continue to be dedicated for nonprofit purposes of the hospital, and not to line the nonprofit hospital's (or SEC facility's) staff's private pockets. See, e.g., Sponsors' Statement to A. 1135 11 (L. 2021, c. 17) (continuing the LPT exemption for "modern nonprofit hospitals" will alleviate potential tax burdens due to the multitudinous litigation engendered by the decision in AHS II and will "help" these nonprofit hospitals to "continue to fulfill their nonprofit mission"). As our Supreme Court noted: "A crucial factor is where the profit goes . . . Who gets the money? If we can trace it into someone's personal pocket" an LPT exemption is not available. Paper Mill Playhouse, 95 N.J. at 522 (citation and internal quotation marks omitted). Such an inquiry again, as the State properly argues, is properly subject of an as-applied challenge to the grant/denial of an LPT exemption.

Amici argues that due to Chapter 17, there is now no difference between a for-profit hospital and a nonprofit hospital (statistically few of the former and more of

the latter), therefore, the LPT burden should also be borne by the nonprofit hospitals.[13] The short answer to this is what is stated above (and below) namely, law should not be static. The intent of the exemption statute should not take a backseat. Id. at 517 (critiquing as "fundamentally unsound" the argument that a nonprofit theater which produces popular, successful, entertaining, and crowd-pleasing theatrical productions is a "commercial enterprise" unworthy of a LPT exemption since it implies that such shows cannot fulfil the exempt purposes of "moral and mental improvement" delineated in N.J.S.A. 54:4-3.6, and noting that plays which are "professionally and well-produced . . . generate[] more popular attraction" for the ultimate benefit of the public). That "nonprofit theaters would be discouraged from presenting valuable new works with no history as to their appeal for fear that" they would be deemed "popular" thus, meriting a denial of an a LPT exemption, is a "climate" that the "Legislature did not intend to foster . . . in the administration of its" LPT laws. Id. at 518. The same analogy applies here since the legislative intent of Chapter 17 was to continue the LPT exemption for "modern nonprofit hospitals" and "help" them to "continue to fulfill their nonprofit mission." See Sponsors'

[13] Both plaintiffs and amici reference articles and information that nonprofit hospitals are operating like for-profit hospitals, generating significant revenues, while the State alludes to a "White Paper" on a hospital's "critical role" in public service. The court has no need to consider these materials since it has sufficient legal bases to render its conclusions as to the validity of Chapter 17 as a matter of law.

Statement to A. 1135 11 (L. 2021, c. 17). This court should not be quick to thwart Chapter 17's intent to retain the LPT exemption for nonprofit hospitals which try to operate in the modern-day world, not the go-to-an-unhygienic-hospital "to die" era, see AHS II, 28 N.J. Tax at 480-83, especially when every legislative enactment is merited the highest level of presumptive constitutionality. Cf. Julia L. Butterfield Mem. Hosp. Assoc. v. Phillipstown, 48 A.D. 2d 289, 295 (N.Y. App. Div. 1975) (Rabin, Acting P.J., dissenting) ("a hospital's effect upon the population at large is significantly greater than . . . other beneficial organizations . . . there is greater force [to] the argument that public policy supports real property tax exemptions for hospitals," thus, "any restrictive trend [as to granting exemptions] may not be applicable").

Similarly, in Paper Mill Playhouse the Court held that because the theater employed for-profit, well-paid actors, it did not convert its tax-exempt purpose into a for-profit making venture or the use of the property for the operation and conduct of a for-profit activity. 95 N.J. at 518-19 ("a theater that employs professionals is [not] significantly different for tax purposes from one that does not" and "employment of professional actors and staff assures a high standard of quality for all the defendant's undertakings") (citation omitted). Thus, as long as the property's use "is solely in the furtherance of" the nonprofit theater's tax-exempt purpose, these factors should not control. Id. at 523. So too here, that Chapter 17 permits use, or

lease of a nonprofit hospital or SEC facility's property by for-profit medical providers for exclusively hospital purposes, does not mean that the nonprofit hospital or SEC facility are operating a for-profit venture in complete violation of their organizational nonprofit purpose(s). Cf. Hunterdon Med. Ctr., 195 N.J. at 574 (even if a nonprofit hospital's off-site activity competes with "like commercial or privately owned facilities," one must analyze whether the property "is actually used predominantly by patients and hospital employees" as opposed to "commercial members" before denying the facility a LPT exemption); Julia L. Butterfield Mem. Hosp. Assoc., 48 A.D. 2d at 294-95 (Rabin, Acting P.J., dissenting) (use by for-profit medical providers "may be either a hospital purpose or not, depending upon the connection between the use and hospital purposes" with the "focus" being on this connection, and not "solely upon nature of the use").

The corporate form of the entity is a requirement, thus, electing a for-profit incorporation versus a nonprofit incorporation will have differing tax consequences. See Presbyterian Home, 409 N.J. Super. at 189 ("for-profit healthcare facilities . . . remain[] unprotected under the Exemption Clause and" N.J.S.A. 54:4-3.6). Therefore, amici's claim that Chapter 17's continuation of a LPT exemption to nonprofit hospitals and nonprofit SEC facilities is invalid because these entities can use the services of for-profit medical providers, is unpersuasive.

In sum, the court finds that Chapter 17 does not facially violate the Exemption Clause. It does not bar challenges to the grant, or defense of the denial of an LPT exemption on grounds the use is not in compliance with Chapter 17's conditions. The line of inquiry has simply shifted where the focus is not on the mere presence of for-profit medical providers at the premises of a nonprofit hospital, but whether such presence complies with Chapter 17's conditions. In this connection, the court agrees with the State that the nonprofit SEC facilities are functionally equivalent to the nonprofit hospitals, indeed, under Chapter 17, they must be owned and operated by a nonprofit entity organized exclusively for hospital purposes. See N.J.S.A. 54:4-3.6j(a). Therefore, all the findings above and below apply equally and without any distinction to nonprofit hospitals and nonprofit SEC facilities.

SPECIAL LEGISLATION-EQUAL PROTECTION

Per our Constitution, "[t]he Legislature shall not pass any private, special or local laws . . . [r]elating to taxation or exemption." N.J. Const. art. IV, § 8, ¶ 9(6). Thus, the Legislature is permitted to "pass general laws" in this regard. N.J. Const. art. IV, § 8, ¶ 9.

Initially, simply because Chapter 17 was enacted in response to AHS II does not render it special legislation. If that was the theory, then several legislative enactments would fail with no further analysis. See, e.g., A.H. Robins Co., Inc. v. Dir., Div. of Taxation, 365 N.J. Super. 472 (App. Div. 2004) (statute amended in

response to Tax Court's decision on net operating loss carryover while taxpayer's appeal was pending, was not special legislation).

Rather, the court should examine whether the enactment excludes individuals or entities from the benefits of the law, who/which would otherwise normally be included. See Harvey v. Essex Cty. Bd. of Chosen Freeholders, 30 N.J. 381, 389 (1959) ("In deciding whether an act is general or special, it is what is excluded that is the determining factor. . . . If no one is excluded who should be encompassed, the law is general" which is also the case if the law "affect[s] equally all of a group who, bearing in mind the purposes of the legislation, are distinguished by characteristics sufficiently marked and important to make them a class by themselves.") (citation omitted); Town of Secaucus, 133 N.J. at 493 ("absolute equality in taxation is a practical impossibility").

The analysis of an alleged special legislation is similar to an equal protection analysis. New Jersey State Bar Ass'n v. State, 387 N.J. Super. 24, 52 (App. Div. 2006). This then means that "the Legislature has wide discretion in determining the perimeters of a classification" and it is presumed that the Legislature had "adequate factual basis" for enacting the law in its "judgment." Ibid. (citation and internal quotation marks omitted). See also Horizon Blue Cross Blue Shield, 425 N.J. Super. at 17-18 (special legislation analysis involves the same inquiry as an equal protection analysis, i.e., "whether there is any rational basis for the legislative classification,

the impact of which, whether positive or negative, falls on a single person or entity") (citation omitted); Armour v. Indianapolis City, 566 U.S. 673, 680-82 (2012) ("Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes," and where the "subject matter" of an enactment involves a "tax classification" then it is "constitutionally valid if there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational.") (citations and internal quotation marks omitted). "Thus, a statute will only be invalidated if it clearly and irremediably violates the constitutional provisions prohibiting special legislation." New Jersey State Bar Ass'n, 387 N.J. Super. at 52 (citation and internal quotation marks omitted).

In this regard, it does not automatically follow that if only one entity fits within the purview of a statute, then the law must be deemed special legislation. See, e.g., Camden City Bd. of Educ. v. McGreevey, 369 N.J. Super. 592, 606 (App. Div. 2004) ("a statute that is otherwise valid is not unconstitutional as special legislation just because its classification or qualification provisions result at a particular time in a class of one") (citation and internal quotation marks omitted); Horizon Blue Cross Blue Shield, 425 N.J. Super. at 20 ("If the classification is valid, it is immaterial how

many or how few entities compose the class" thus, it is irrelevant that plaintiff "was the target of the legislation," because "the reason precipitating the legislative action is not determinative, for even a statute intended to be special may be a general one.") (citation and internal quotation marks omitted).

Here, the basis for enactment of Chapter 17 was to continue the LPT exemption for nonprofit hospitals, which must, in the modern world, operate using services of for-profit entities, so that the beneficiary of those services, the patient requiring the necessary care (whether it be medical, hospital, surgical or nursing) is afforded the timely and efficient provision of those services at the nonprofit hospital's (or SEC facility's) premises. In enacting Chapter 17 in response to AHS II, the Legislature, as did the trial court therein, acknowledged the obvious, practical, real-world operations of modern hospitals. The Legislature's decision to continue the LPT exemption for nonprofit hospitals operating in today's world thus has an eminently rational basis - to ensure timely and proper medical care for the public by using, if necessary, on-premises services from for-profit medical providers. Nonetheless, Chapter 17 also expressly conditioned the continued LPT exemption to property (or portions thereof) when it is used for "medical purposes related to the delivery of health care services directly to the hospital," and when it "is used exclusively for hospital purposes." See also Sponsors' Statement to A. 1135 11 (L. 2021, c. 17) (continuing the LPT exemption for "modern nonprofit hospitals" will

alleviate potential tax burdens due to the multitudinous litigation engendered by the decision in AHS II and help "continue to fulfill" a hospital's nonprofit mission). These are sufficiently rational reasons for the enactment of Chapter 17.

Further, Chapter 17 applies to all nonprofit hospitals and all nonprofit SEC facilities. Plaintiffs and amici point out that nonprofit hospitals can now receive LPT exemption for operating like for-profit hospitals whereas the latter do not. However, the tax incidence is dependent on the form of incorporation chosen by the hospital, which includes the choice to use/distribute the profits/earnings to further the goals of the entity or for the personal benefit of the entity's staff or shareholders. That business choice does not cast Chapter 17 as a forbidden special legislation. See, e.g., Horizon Blue Cross Blue Shield, 25 N.J. Tax at 312 (holding that the Legislature can treat health service corporations and other insurers "differently for taxing purposes" because they are "different corporate entities"); cf. Garma v. Lakewood Twp., 14 N.J. Tax 1, 15 (Tax 1994) ("[T]he Equal Protection Clause does not require that all persons be treated alike. Rather, it requires that similar persons be treated similarly, and that people of different circumstances be treated differently.").

The same response attends to plaintiffs' and amici's arguments that other than nonprofit hospitals and nonprofit SECs, all other nonprofit entities such as schools and religious institutions, will pay tax on the portion of the property used by for-

profit providers. However, those nonprofit entities are not organized exclusively for hospital purposes, nor are they constrained by Chapter 17 to use the property exclusively for hospital purposes. See Horizon Blue Cross Blue Shield, 425 N.J. Super. at 19-20 (legislation based on the entity's "inherent characteristics" is not special legislation); cf. Township of Green v. Life with Joy, Inc., 32 N.J. Tax 580 (Tax 2022) (granting LPT exemption for a home used to better lives of developmentally disabled young adults, including the entity's owners' child, although the basement of the home which was equipped as a gym was used by for-profit private trainers to provide physical training to said children).[14]

In sum, the Legislature recognized that providing medical services to the public through nonprofit hospitals efficiently and effectively in the modern era, is no less a furtherance of the entity's nonprofit goals than it was before. That such

[14] The court distinguished AHS II by noting that the "for-profit doctors had lucrative contracts with the Hospital" under which the doctors had significant "rights to the operations of their medical disciplines within the Hospital . . . substantial entanglement with alleged nonprofit aspects of the Hospital, unlimited access to Hospital property, whose presence there was clearly intended to make a profit." Township of Green, 32 N.J. Tax at 601-02. Whereas the for-profit gym trainers "are paid with public funds through the New Jersey Department of Health's DDD program" and provided services solely to "fulfill their duties to their clients through" such program. Id. at 602. The court also maintained that the profit-making motive and profits of the private gym trainers and aides were de minimis. Id. at 602-03. However, and as applicable here, any alleged integration between the for-profit medical providers and the nonprofit hospital found in AHS II should, for purposes of Chapter 17, be addressed in an as-applied challenge or a fact-based challenge when an LPT exemption is appealed.

operational methods include use of the premises by for-profit medical providers should not, the Legislature decided, eliminate the LPT exemption when the services are provided directly to the nonprofit hospital, and when the property is used exclusively for hospital purposes. These reasons are rational and promote the legislative and constitutional intent of granting an LPT exemption to entities organized exclusively for nonprofit (hospital) purposes, and whose profits are earmarked solely for furtherance of charitable or other nonprofit uses. These findings equally apply to reject plaintiffs' allegations that Chapter 17 facially violates their equal protection rights, as are the findings above under the Exemption Clause portion of this opinion.

MANIFEST INJUSTICE - DUE PROCESS

Plaintiffs maintain that the retroactivity portion of Chapter 17 is manifestly unjust because the Legislature effectively nullified pending litigation for tax years 2016 onwards, including litigation on imposing added/omitted assessments for tax years 2014 and 2015. Plaintiffs maintain that the time, money, and costs of litigation expended by the taxing districts (at the expense of their resident taxpayers), with a fair expectation that the LPT exemption for nonprofit hospitals will be denied by the courts based on the ruling in AHS II (thus to the benefit of their resident taxpayers), was upended by Chapter 17's retroactivity provisions. The State argues that initiating litigation whether to revoke an LPT exemption or for any other purpose is

a financial risk consciously undertaken, and the expectation of a "win" in litigation is no less tenuous than an expectation that legislation will not impact the litigation.

"The doctrine of manifest injustice is designed to prevent unfair results that do not necessarily violate any constitutional provision." Oberhand v. Dir., Div. of Taxation, 193 N.J. 558, 572 (2008) (citation and internal quotation marks omitted). The analysis is similar to, but not "determined by" a due process analysis. Ibid. (citation and internal quotation marks omitted). The inquiry is focused on "unfairness and inequity," and weighs "the public interest in the retroactive application of the statute against the affected party's reliance on previous law, and the consequences of that reliance." Ibid. (citation and internal quotation marks omitted).

All acknowledge that AHS II was a trial court decision which was based upon the facts therein. Therefore, plaintiffs faced the burden to prove that the facts in each pending case warranted revocation of the LPT exemption. Concededly, if those properties were being used by/leased to for-profit medical providers in furtherance of their for-profit business, or it could be shown that monies received by the nonprofit hospitals were being diverted towards non-charitable purposes or into private pockets, then those hospitals' LPT exemptions could have been revoked. However, the facts in each pending case may be different. Another trial court could decide differently than the court in AHS II. In other words, there was an equal risk

of loss in the pending cases to the taxing districts especially where the nonprofit hospitals were all granted an LPT exemption including for post-AHS II tax years. Thus, plaintiffs' argument that a win, i.e., reversal of the granted exemption, was a reasonable certainty based on the factual findings in AHS II is unpersuasive.[15]

Additionally, the issue of added/omitted assessments was litigated unfavorably for the taxing district in another matter. Borough of Red Bank v. RMC-Meridian Health, 30 N.J. Tax 551 (Tax 2018), aff'd, 32 N.J. Tax 168 (App. Div.), certif. denied, 238 N.J. 455 (2019). To maintain that despite such a result, there was a reasonable expectation that added/omitted assessments for tax years 2014 and 2015 in other cases would provide a favorable result simply highlights the inapplicability of the manifest injustice doctrine. In other words, the court finds that facially, there is nothing to justify the contention that Chapter 17 upset a patently reasonable reliance on pre-existing law, to wit, a trial court decision which was rendered based on the facts in that case, that would have resulted in revocation of the LPT for each nonprofit hospital involved in litigation with a taxing district.

The court also finds that the expectation of LPT revocation based on the fact-based decision in AHS II does not outweigh the public interest in retaining the LPT exemption for nonprofit hospitals so that they "continue to fulfill their nonprofit

[15] Even in AHS II, the parties, after trial, attempted settlement and requested the court to delay issuing its opinion. 28 N.J. Tax at 536 n.75.

mission." The Legislature was careful to expressly qualify the LPT exemption when the nonprofit hospital's premises are being used by for-profit medical providers. Thus, the continuation of the LPT exemption for the benefit of the public (enhanced and efficient multi-level hospital services) outweighs plaintiffs' expectation of any possible litigation success vis-à-vis revocation of LPT exemption and recovery of any alleged "lost" tax revenues.[16]

That the retroactivity is for and from tax year 2014 onwards is not a factor that should render Chapter 17 as manifestly unjust for the same reasons elucidated above.[17] Nor is the fact that several cases were kept on hold pending either completion of discovery, or now, this litigation. Those are purely litigation tactics, the attendant risk of which do not translate into manifest injustice on grounds of a settled, reasonable expectation of a reliance upon the decision in AHS II as being the "law" on revocation of LPT exemptions for nonprofit hospitals.

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[16] It is unclear how revenues are lost in the first place because the grant of the LPT exemption means that revenues are not expected from nonprofit hospitals, therefore, not budgeted as a revenue source.

[17] Litigation in AHS II commenced in tax year 2016 for tax year 2016, plus for tax years 2014 and 2015 as added/omitted assessments if the regular appeal for tax year 2016 was in favor of the taxing district. After the decision in AHS II for tax year 2016, the trial court permitted imposition of such assessments in a bench opinion. See Borough of Red Bank, 30 N.J. Tax at 554. That bench opinion is not binding on the trial court or the Appellate Division. Borough of Red Bank, 32 N.J. Tax at 173.

Most notably, nothing prevents plaintiffs from challenging the grant of an LPT exemption on grounds that the property is being used in violation of Chapter 17. As noted above, nothing also forestalls plaintiffs from inquiring into whether the surplus of any nonprofit hospital or nonprofit SEC facility, funds private coffers.

In sum, the court finds that Chapter 17's reach to tax years 2014 onwards is not manifestly unjust. These findings equally apply to reject plaintiffs' allegations that Chapter 17 facially violates their due process rights.

INJUNCTION

Injunctive relief requires a showing of (1) irreparable harm; (2) settled legal right to an asserted claim; (3) a reasonable probability that plaintiff will succeed on the merits of its claim; and (4) more hardship to plaintiff than to defendant without an injunction. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1983). Plaintiffs have not made this showing. Their expectation of winning all the unresolved pending cases involving challenges to the LPT exemption granted to certain nonprofit hospitals, based purely on the fact-intensive findings in AHS II is not a settled legal right to relief, nor a reasonable probability of litigation success. As the State correctly argues, AHS II did not repeal or invalidate the existing LPT exemption for nonprofit hospitals - rather, it "simply left the door open for legislative action." Plaintiffs were fully aware of this. That the Legislature accordingly acted but not to plaintiffs' liking is not a reason for injunctive relief.

There is no irreparable harm in now requiring plaintiffs to prove that the for-profit medical providers are using/leasing nonprofit hospital or nonprofit SEC facility space for something other than exclusive hospital purposes. Nor is there any such harm because of an expectation of added tax revenues. As noted above, these entities (except the plaintiff hospital in AHS II) were all granted an LPT exemption (including for post-AHS II tax years), therefore, were never viewed as a revenue source by the taxing districts. The expected revenues, if litigation was resolved in favor of a taxing district that challenged the LPT exemption grant, does not state a case of irreparable harm since it was contingent on winning the challenge. A balancing of the hardships - expected wins and possible tax revenues versus continuation of a (conditional) LPT exemption for nonprofit hospitals and nonprofit SEC facilities with these entities paying an ACSC to the municipalities, does not tip the balance in favor of plaintiffs.

It is true that an LPT exemption results in the taxpayers (individuals and for-profit businesses) bearing the burden of that exemption. However, this is true of every entity which merits an LPT exemption under N.J.S.A. 54:4-3.6 (or other comparable statutes as identified by the State). Here and because (1) the taxing districts have a different basis to challenge an LPT exemption under Chapter 17 in addition to the continued remedies of restoring taxability if the entity was organized

for-profit or diverted its revenues to line private pockets, and (2) Chapter 17 requires ACSCs, plaintiffs' arguments in favor of an injunction are completely unpersuasive.

CONCLUSION

For the aforementioned reasons, the court (1) denies the State's motion to dismiss the complaint under R. 4:6-1(e); (2) denies plaintiffs' cross-motion and finds unpersuasive amici's arguments, to declare Chapter 17 facially constitutional; (3) denies plaintiffs' request for injunctive relief; and (4) grants, as a matter of law, the relief requested by the State. Therefore, the complaint is dismissed with prejudice. See Teamsters Local 97 v. State, 434 N.J. Super. 393, 412-13 (App. Div. 2014) (our "courts have not hesitated to dismiss complaints with prejudice when a constitutional challenge fails to state a claim") (citation and internal quotation marks omitted). A judgment in conformance with this opinion will be separately entered.